149 U S 776

RECORD, CASE No. 13,716.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 136.

HUGO HOHENSTEIN, PLAINTIFF IN ERROR,

vs.

EDWARD L. HEDDEN, COLLECTOR OF THE PORT OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 10, 1889.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 16, 1892.

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Hugo Hohenstein, plaintiff, and Edward L. Hedden, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as is said and appears by his complaint, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Melville Weston Fuller, Chief Justice of the Supreme Court of the United States, this 24th day of September, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States the one hundred and fourteenth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.

E. HENRY LACOMBE.

2 [Endorsed:] E. & A. A. 862. 11193. Supreme Court of the United States. Hugo Hohenstein, plaintiff in error, *vs.* Edward L. Hedden, defendant in error. Writ of error. Charles Curie, attorney for plaintiff in error. Due service of a copy of the within writ of error is hereby admitted this 24th day of Sept., 1889. Edward Mitchell, attorney for defendant in error, P. 1.45, 25, ch. U. S. circuit court. Filed Sep. 24, 1889. John A. Shields, clerk.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto,

1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the southern district of New York, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Hugo Hohenstein, plaintiff, and Edward L. Hedden, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as is said and appears by his complaint, we, being willing that such error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the second Monday of October next, that, the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness the Honorable Melville Weston Fuller, Chief Justice of the Supreme Court of the United States, this 24th day of September, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States the one hundred and fourteenth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.

E. HENRY LACOMBE.

2 [Endorsed:] E. & A. A. 862. 11193. Supreme Court of the United States. Hugo Hohenstein, plaintiff in error, *vs.* Edward L. Hedden, defendant in error. Writ of error. Charles Curie, attorney for plaintiff in error. Due service of a copy of the within writ of error is hereby admitted this 24th day of Sept., 1889. Edward Mitchell, attorney for defendant in error, P. 1.45, 25, ch. U. S. circuit court. Filed Sep. 24, 1889. John A. Shields, clerk.

UNITED STATES OF AMERICA, *Southern District of New York,* } *ss:*

I, John A. Shields, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, by virtue of the foregoing writ of error and in obedience thereto,

do hereby certify that the following pages, numbered from three to twenty-seven, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the cause of Hugo Hohenstein, plaintiff in error, against Edward L. Hedden, defendant in error, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this seventh day of October, in the year of our Lord one thousand eight hundred and eighty-nine, and of the Independence of the United States the one hundred and fourteenth.

Seal of U. S. Circuit Court, South. Dist. New York.

JOHN A. SHIELDS, *Clerk.*

3 Superior Court of the City of New York.

HUGO HOHENSTEIN, Plaintiff,
against
EDWARD K. HEDDEN, Defendant. } Summons. No. 1.

To the above-named defendant:

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service, and in case of your failure to appear or answer judgment will be taken against you by default for the relief demanded in the complaint.

Dated New York, Sept. 16, 1886.

CHAS. CURIE,
Plaintiff's Attorney; Offices, No. 44 Exchange Place, New York City.

4 [Endorsed:] 11193. No. 1. N. Y. superior court. Hugo Hohenstein, plaintiff, against Edward L. Hedden, defendant. Summons. Chas. Curie, plaintiff's attorney, 44 Exchange place, New York city. Due service hereof admitted this 16 day of Sept., 1886. E. L. Hedden, by T. S. McAvoy, att'y-in-fact. Received U. S. attorney's office Sept. 25, 1886.

5 The President of the United States of America to the judges of the superior court of the city of New York, Greeting:

[L. S.] We, for certain reasons, being desirous that our circuit court of the United States for the southern district of New York, in the second circuit, shall be certified of a certain cause commenced before you against E. L. Hedden, defendant, by Hugo Hohenstein, plaintiffs, do therefore command you that the record and proceedings in the said cause you distinctly and openly send to the said circuit court, at the city of New York, on the 12 day of Oct., 1886, as fully and amply as the same are remaining before you, by whatever names the said parties may be called therein, to-

gether with this writ, that our said court may cause to be further done thereupon what of right ought to be done.

Witness Morrison R. Waite, Esquire, Chief Justice of the Supreme Court of the United States, the 7 day of Oct., in the year one thousand eight hundred and eighty-six.

TIMOTHY GRIFFITH, *Clerk.*

STEPHEN A. WALKER,
United States Attorney, Attorney for Defendant.

6 [Endorsed:] 11193. U. S. circuit court. Hugo Hohenstein *vs.* E. L. Hedden. Copy. Certiorari. Stephen A. Walker, U. S. attorney, attorney for defendant. Take notice that the within is a copy of a certiorari this day issued out of the circuit court of the United States for the southern district of New York. New York, Oct. 7, 1886. Yours, Stephen A. Walker, U. S. attorney, attorney for defendant. To C. C., plaintiff's attorney. Due service of a copy of the within and of the above notice is hereby admitted. New York, Oct. 7, 1886. Chas. Curie, plaintiff's attorney.

7 Circuit Court of the United States for the Southern District of New York.

HUGO HOHENSTEIN, Plaintiff,
against
EDWARD L. HEDDEN, Defendant,
} Complaint.

Plaintiff complains—

1st. That defendant was, during the time hereinafter named, collector of customs of the United States at the port of New York.

2d. That plaintiff was, during said times, in trade under the firm name of H. Hohenstein, and, as such, duly imported and entered at the port of New York the goods described in the bill of particulars annexed.

3d. The defendant, as such collector, exacted from plaintiff as and for duties thereon and plaintiff, in order to obtain said goods, was compelled to pay and did pay the sum of two hundred & seventeen $\frac{25}{100}$ dollars in excess of the amount required by law.

4th. That plaintiff filed with said defendant due and timely protests in writing upon each entry of said goods against his decision exacting such duty, setting forth distinctly and specifically the grounds of objection thereto and also as above stated.

5th. That plaintiff made due and timely appeals in each case to the Secretary of the Treasury, who has affirmed the decision of defendant as to certain of said entries and as to the rest of said entries has neglected to answer said appeals, and more than ninety days had elapsed since said unanswered appeals when this action was commenced.

6th. That the bill of particulars hereto annexed states for each importation separately the date of entry at the custom-house, of the payment of duty in excess, of the filing of the said protests, of the appeal to the Secretary of the Treasury, and of his decision thereon,

together with the other particulars required by law, and is made a part hereof.

7th. That said sum so exacted as aforesaid has never been repaid to plaintiff and is still due and owing to him.

Wherefore plaintiff demands judgment against defendant for two hundred & seventeen $\frac{25}{100}$ dollars, with interest on the several sums named in the bill of particulars from the several dates of payment as appear thereby, together with the costs and disbursements of this action.

CHAS. CURIE,
Attorney for Plaintiff.

8 [Endorsed:] 11193. U. S. circuit court. Hugo Hohenstein, plaintiff, against Edward L. Hedden, defendant. Complaint. Chas. Curie, plaintiff's attorney, 44 Exchange place, New York city. Received U. S. attorney's office Oct. 7, 1886.

Bill of Particulars.

3. Name of importer, H. Hohenstein.

		Description of goods.	Whence imported.	Name of vessel.	Date of invoice.	Date of entry at custom-house.	Amount of duty illegally exacted.	Date of payment of duties in excess.	Protest filed.	Date of appeal to Secretary of the Treasury.	Date of Secretary's decision.
184	1	Paper lamp shades	Hamburg	Rhaetia	1885. Nov. 23	1885. Dec. 14	32 15	1886. Feb'y 27	1886. Feb'y 20	1886. Feb'y 20	1886. June 17
	2	" "	"	Bohemia	Feb'y 6	1886. M'ch 4	22 50	M'ch 18	M'ch 19	M'ch 19	" 7
	3	" "	Copenhagen	Heckla	May 8	May 28	162 60	June 12	June 16	June 16	No ans. rec'd.

9 [Endorsed:] 1193. U. S. circuit court, southern district of New York. Hugo Hohenstein against Edward L. Hedden. Bill of particulars. New York, Oct. 7, 1886. To Stephen A. Walker, Esquire, defendant's attorney. Sir: Please to take notice that this action is brought to recover duties illegally exacted by the defendant as collector of customs at the port of New York, and the within is the plaintiff's bill of particulars. Chas. Curie, plaintiff's attorney, 44 Exchange place, New York city. Received U. S. attorney's office Oct. 7, 1886.

10 Circuit Court of the United States for the Southern District of New York.

HUGO HOHENSTEIN
versus
E. L. HEDDEN, Collector, etc. } 11193.

The defendant answers to the complaint as follows:

I. He denies that the true duty or that the true and lawful rate of duty on the goods referred to in the complaint was as stated in the complaint, and he denies that the plaintiff was compelled to pay or did pay defendant, as collector or otherwise, the sum stated in the complaint or any sum in excess of the amount required by law as duties upon the said goods, or that any sum of money unauthorized by law was exacted as duties on said goods or otherwise, or that the same was paid in order to obtain possession of said goods.

II. He denies that the plaintiff filed with the defendant any protest or protests as required by section 3011 of the Revised Statutes of the United States.

III. He denies that the sum stated in the complaint or any sum is now due and owing the plaintiff.

IV. He denies that he has any knowledge or information sufficient to form a belief as to whether the goods alleged in the complaint to have been imported at the time therein mentioned were in fact such goods as are described in the said complaint.

V. And, further answering, he alleges that no protest was filed within ten days after the ascertainment and liquidation of the duties thereon.

VI. And, further answering, he alleges that no appeal was taken to the Secretary of the Treasury within thirty days after the date of the ascertainment and liquidation of duties thereon.

VII. And, further answering, he alleges that this action was not brought within ninety days after the decision of the Secretary of the Treasury on the appeal taken from the ascertainment and liquidation of duties thereon, or within ninety days after payment of duties paid thereon after such decision.

VIII. And, further answering, he alleges that this action was brought without the decision of the Secretary of the Treasury on the appeal from the ascertainment and liquidation of duties thereon having been first had and without ninety days having elapsed from the date of such appeal.

IX. And, further answering, the defendant alleges that all moneys received by him from the plaintiff in respect of the importations in the complaint alleged to have been made were demanded of the plaintiff and were by the plaintiff voluntarily paid to him in his capacity as collector of customs as and for duties due the United States on imported merchandise, and were forthwith before the commencement of this action and before the receipt by defendant of any protest or objection on the part of the plaintiff paid over by the de-

fendant in his official capacity aforesaid to the United States and placed beyond his control.

X. And, further answering, the defendant alleges that all moneys received by him from the plaintiff in respect of the importations in the complaint alleged to have been made were sums due from the plaintiff to the United States as duties, according to the rate of duty imposed by law, upon articles of merchandise imported by plaintiff and assessed with duty, and no other sums than duties regularly assessed and ascertained and liquidated according to law upon the plaintiffs' entry thereof were collected or received by defendant from the plaintiff.

Wherefore defendant demands judgment that the complaint be dismissed with costs.

STEPHEN A. WALKER.
United States Attorney, Attorney for the Defendant.

11 [Endorsed:] 11193. U. S. circuit court, southern district of New York. Hugo Hohenstein *vs.* E. L. Hedden, collector, etc. Copy answer. Stephen A. Walker, United States attorney, attorney for defendant. Due service of a copy of the within answer is hereby admitted. New York, Aug. 4, 1887. Chas. Curie, attorneys for plaintiffs. To C. Curie, Esq., plaintiff's attorney.

12 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-rooms, in the city of New York, on Thursday, the 14th day of February, in the year of our Lord one thousand eight hundred and eighty-nine.

Present: The Honorable E. Henry Lacombe, circuit judge.

HUGO HOHENSTEIN
vs.
EDWARD L. HEDDEN. } 11193.

Now comes the plaintiff, by Stephen G. Clarke, Esq., his attorney, and moves the trial of this cause.

Likewise comes the defendant, by William Wickham Smith, Esq., assistant United States attorney, his attorney.

Thereupon a jury is empanelled and the cause proceeds to trial.

After hearing the evidence of the plaintiff and the argument of counsel—

On motion of William Wickham Smith, Esq., the jury, by direction of the court, say that they find a verdict for the defendant, and so they say all.

On motion of Stephen G. Clarke, Esq., it is ordered that a stay of sixty days by granted the plaintiff within which to make and serve a case, with leave to turn the same into a bill of exceptions.

An extract from minutes.

[L. S.] JOHN A. SHIELDS, *Clerk.*

13 United States Circuit Court, Southern District of New York.

HUGO HOHENSTEIN
vs.
EDWARD L. HEDDEN. } Judgment, Sept. 13th, 1889.

The issues in this action having been brought on for trial before Mr. Judge Lacombe and a jury, at a circuit court of the October term, 1888, and the issues having been tried and a verdict for the defendant having been duly rendered on the 14th day of February, 1889, and his costs having been adjusted at $48.85:

Now, on motion of Stephen A. Walker, United States attorney, for defendant, it is adjudged that the defendant have judgment against the plaintiffs upon the issues in this action, and that he recover the sum of $48.85, his taxed costs, and have execution therefor.

Judgment signed this 13th day of September, 1889.

GILBERT E. ROGERS,
Deputy Clerk.

14 [Endorsed:] 11193. United States circuit court. Hugo Hohenstein *vs.* Edward L. Hedden. Judgment-roll. Stephen A. Walker, United States attorney, attorney for defendant. Filed ——, 188–. Costs, $—. U. S. circuit court. Filed Sep. 13, 1889, 4 p. m. John A. Shields.

15 United States Circuit Court, Southern District of New York.

HUGO HOHENSTEIN
vs.
EDWARD L. HEDDEN. } Bill of Exceptions.

Afterward and on the 14th day of February, 1889, at a stated term of this court held in the city of New York, the issues in this case came on for trial before the Honorable E. Henry Lacombe, a judge of this court, and a jury duly empaneled to try the issues therein.

Counsel for plaintiff, to maintain the issues on his part, introduced evidence tending to show that plaintiff imported at the port of New York, in the year 1886, certain lamp-shades, upon which the collector, the defendant herein, assessed duty at the rate of 45 % ad valorem, as manufactures composed wholly or in part of iron or other metal, which rate of duty was paid by plaintiff under protest, as hereinafter stated, in order to obtain the goods imported by him.

As to the importations in question, the plaintiff seasonably filed protests and appeals and in due time commenced this action. The essential portion of the protest is as follows:

16 "We hereby protest against your decision, liquidation and assessment of duties as made by you and the payment of more than 15 % ad val. on our importations below mentioned, consisting of certain paper lamp-shades, composed of paper and other materials—paper chief value—claiming that under exisitng laws, and particularly by Sch. "M" and sec. 2499, act M'ch 3, '83, said

goods are liable at no more than 15 ad val., as a manf. of paper or of which paper is chief value, or at no more than 25 % ad val., as printed matter, under said sched. and act, and not at 45% ad val., or as charged by you; and we give notice that we pay all other higher rates than is claimed above as the legal rate under compulsion, &c."

Samples of goods in question were introduced in evidence, and Hugo Hohenstein, being called as a witness for plaintiff and duly sworn, testified as follows:

(Witness being shown invoices:) This is not an exact sample of the goods imported, but similar. It is the same shade, only a different pattern; the same description and the same cost, but not exactly that number.

(Referring to the shade Exhibit S–i:) That is a paper lamp-shade imported from Berlin, Germany. I have ascertained in the course of my business the value of the separate component materials, the cost of making as well as of the unfinished shades—that is, the shades without any wire or any attachment.

The complete shade, like the one in evidence here, costs per
17 gross twenty-seven marks. The unfinished shade, the paper only, sixteen marks fifty pfennig. The gold paper for same, two marks twenty-five pfennig. For making and finishing the shade, four marks twenty-five pfennig; wire for upper and lower ring, two marks; cutting of the wire, fifty pfennig; the wire holder, one mark fifty pfennig—making twenty-seven marks; the result of all which is that the paper in the same costs eighteen marks seventy-five pfennig; the metal portion of it, three marks fifty pfennig, and the labor, four marks seventy-five pfennig. The shade is used to hang over chimneys for ordinary lamps, and it is only known as a paper lamp-shade,

Being cross-examined by defendant's counsel:

I am an importer of fancy goods; we handle chinaware, glassware, and brass ornaments—everything, in fact, that is in the importation of fancy goods. We deal in lamps and lamp-shades—in other kinds of shades besides these. I have bought shades like these which had no ring of metal at all—simple paper—simply this same shade in paper. I manufactured them here; put in the rings of wire at top and bottom. This certain shape cannot be used for any other purpose but a lamp-shade, and cannot be used as a lamp-shade if it were not supported by that certain holder. This attachment at the top is intended to slide right down over the chimney. That shade cannot be made in any other way except as it is made
now, and cannot be made without metal if it is used for a
18 lamp-shade at all. The paper when it gets hot wrinkles, so you can understand that if those rings were not in the heat would curl the paper, and you would have no shade. This inside paper is a paper stand, but is no part of the shade itself, but it is a necessity in holding the shade in the right shape until it is sold for use. The consumer does not need it, but we sell it because the price includes that. You cannot pack the shades in paper alone; you have got to have that (referring to inside paper case) in them.

Thereupon the plaintiff rested, and the counsel for the defendant called no witness in his behalf, but moved the court, on the testimony of the plaintiff, to direct a verdict for the defendant, and the counsel for the plaintiff moved the court to direct a verdict for the plaintiff for the difference between 45 and 15 % ad valorem upon goods imported. The court denied the motion of the plaintiff. To which ruling and direction the counsel for the plaintiff then and there duly excepted, and the exception was allowed. Thereupon the court granted the motion of the defendant and directed the jury to find a verdict for the defendant. To which ruling and direction the counsel for the plaintiff then and there duly excepted, and the exception was allowed, and the jury thereupon found a verdict for the defendant.

And inasmuch as the foregoing matters of law and fact and the several exceptions taken, made, and allowed do not appear upon the records of the trial: therefore, upon the prayer of the
19 plaintiff by his counsel, said judge has signed and sealed the foregoing as and for the bill of exceptions in this case as of the 14th day of February, 1889.

E. HENRY LACOMBE.

Consented to.

STEPHEN A. WALKER,
U. S. Att'y.
CHAS. CURIE, *Att'y for Pl'ff.*

(Endorsed:) No. 11193. U. S. circuit court, southern dist. of New York. Hugo Hohenstein *vs.* Edward L. Hedden. Bill of exceptions. Charles Curie, plaintiff's attorney, 44 Exchange place, N. Y. U. S. circuit court. Filed Sept. 11, 1889. John A. Shields, clerk.

20 Supreme Court of the United States.

HUGO HOHENSTEIN, Plaintiff in Error,
vs.
EDWARD L. HEDDEN, Defendant in Error. } Assignment of Errors.

Afterwards, to wit, on the second Monday of October, in the same term, before the justices of the said court, at the Capitol, in Washington, comes the said plaintiff in error, by Charles Curie, his attorney, and says that in the record and proceedings aforesaid there is manifest error, in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the said defendant in error against the said plaintiff in error, whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendant.

And the said plaintiff prays that the judgment aforesaid, for the error aforesaid and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and

that he, the said plaintiff, may be restored to all things which he has lost by occasion of said judgment, &c.

CHARLES CURIE,
Attorney for Pl'ff in Error.

21 [Endorsed:] 11193. United States Supreme Court. Hugo Hohenstein, plaintiff in error, *vs.* Edward L. Hedden, defendant in error. Assignment of error. Charles Curie, attorney for plaintiff in error. Due service of a copy of the within assignment of error is hereby admitted this 24 day of Sept., 1889. Edward Mitchell, attorney for defendants in error. To —— ——, attorney for —— ——, — in error. U. S. circuit court. Filed Sept. 24, 1889. John A. Shields, clerk.

22 Supreme Court of the United States.

HUGO HOHENSTEIN, Plaintiff in Error,
v.
EDWARD L. HEDDEN, Defendant in Error. } Joinder in Error.

And afterwards, to wit, on the second Monday of October, in said term, the said defendant in error, by Edward Mitchell, U. S. att'y, his attorney, comes here into court and says that there is no error either in the record or proceedings aforesaid or in the giving of the judgment aforesaid.

And he prays that the said Supreme Court, before the justices thereof now here, may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid above assigned for error, and that the judgment aforesaid, in form aforesaid given, may be in all things affirmed, &c.

EDWARD MITCHELL,
U. S. Att'y, Attorney for Defendant in Error.

23 [Endorsed:] 11193. United States Supreme Court. Hugo Hohenstein, plaintiff in error, *vs.* Edward L. Hedden, defendant in error. Joinder in error. Edward Mitchell, U. S. att'y, attorney for defendant in error. Due service of a copy of the within joinder in error is hereby admitted this 25th day of Sept., 1889. Charles Curie, attorney for plaintiff in error. To Charles Curie, Esq., attorney for plaintiff in error. U. S. circuit court. Filed Sept. 25, 1889. John A. Shields, clerk.

24 Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit.

HUGO HOHENSTEIN, Plaintiff in Error,
vs.
EDWARD L. HEDDEN, Defendant in Error. } Bond for Costs.

Know all men by these presents that we, Hugo Hohenstein and Martin Schroeder, are held and firmly bound unto the above-named Edward L. Hedden in the sum of two hundred and fifty dollars, to

be paid to the said Edward L. Hedden; for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 19th day of September, in the year of our Lord one thousand eight hundred and eighty-nine.

Whereas the above-named plaintiff in error has prosecuted his writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the judge of the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named plaintiff in error shall prosecute his said writ of error to effect and answer all damages and costs if he fails to make his said writ of error good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HUGO HOHENSTEIN, [L. S.]
78–80 *Murray St.*
M. SCHROEDER, [L. S.]
34½ *Pine St.*

Sealed and delivered and taken and acknowledged this 19 day of September, 1889, before me—

[L. S.] WILLIAM H. NORTHUP,
Notary Public.

Certificate on file in New York county.

25 [Endorsed:] 11193. U. S. circuit court, southern district of New York. Hugo Hohenstein, pl'ff in error, *vs.* Edward L. Hedden, def't in error. Bond for costs on writ of error. Approved as to form, amount, and sufficiency of surety. Sept. 24, 1889. E. Henry Lacombe. U. S. circuit court. Filed Sept. 24, 1889. John A. Shields, clerk.

UNITED STATES OF AMERICA,
Southern District of New York, } *ss.:*

Martin Shroeder, being duly sworn, deposes and says that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

M. SCHROEDER. [L. S.]

Sworn to this 19 day of Sept., A. D. 1889, before me—
WILLIAM H. NORTHUP,
Notary Public, Kings County.

Certificate on file in New York county.

26 UNITED STATES OF AMERICA, *ss:*

To Edward L. Hedden, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, eighteen hundred and eighty-nine, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the southern district of New York, wherein Hugo Hohenstein is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Dated September 24, 1889.

E. HENRY LACOMBE.

27 [Endorsed:] 11193. U. S. Supreme Court. Hugo Hohenstein, plaintiff in error, against Edward L. Hedden, defendant in error. Citation. Charles Curie, attorney for plaintiff in error. Due service of a copy of the within citation is hereby admitted this 24 day of Sept., 1889. Edward Mitchell, attorney for defendant in error. U. S. circuit court. Filed Sept. 24, 1889. John A. Shields, clerk.

Endorsed on cover: Case No. 13,716. S. New York C. C. U. S. No. 136. Hugo Hohenstein, plaintiff in error, *vs.* Edward L. Hedden, collector of the port of New York. Filed October 10, 1889.

Office Supreme Court U. S.
FILED.
DEC 12 1892
JAMES H. McKENNEY,
CLERK.

C. G. Burgoyne's Printing Business, 146-150 Centre St., N.

Supreme Court of the United States.

OCTOBER TERM, 1892.

HUGO HOHENSTEIN
vs.
EDWARD L. HEDDEN.

No. 136.

PLAINTIFF'S BRIEF.

Statement.

In 1886, plaintiff imported from Berlin into New York some lamp-shades of paper, held in position by a small wire, which cost, to make, twenty-seven marks a gross, thus separated into items;—value of the paper, eighteen and three-quarter marks; of the metal portion, three and a half marks; labor, four and three-quarter marks. (Rec. 9, fol. 17.)

"The shade is used to hang over chimneys for ordinary lamps, and it is *only* known as a *paper* lamp-shade." *(Ib.)*

The defendant collector assessed duty upon this article at 45%, as 'manufactures composed wholly or in part of iron or other metal.' *(Id.* 8, fol. 15*)* Against this exaction the plaintiff protested, and complied with all the forms necessary to have it here reviewed. *(Ib.)* He claims his goods to be dutiable at 15% as a 'manu-

facture of paper or of which paper is chief value.' *(Id.* 9, top, and 10, top*)*. He was the only witness in the case ; and upon his testimony, the essential point of which is above-stated, each party asked to have a verdict directed thereon in his favor. The Court denied the plaintiff's motion, and granted that of the defendant, directing a verdict in the latter's favor. (Rec. 10, fol. 18.) The plaintiff excepted to the denial of his own motion, and to the granting of that of the defendant. *(Ib.)* Verdict rendered according to direction. *(Ib.* and 7, bottom*)* and judgment entered thereon. "*Id.* 8 top."

Assignment of Errors.

The plaintiff in error assigns for error :—

1. The refusal to direct a verdict in his favor, and the denial of his motion therefor. (Rec. 10, fol. 18.)

2. The granting of defendant's motion to have a verdict directed in his favor. *(Ibid.)*

3. The direction to the jury to render a verdict for the defendant. *(Ibid.)*

4. The verdict so rendered. *(Ib.* and 7 bottom.*)*

5. The judgment entered upon that verdict. *(Id.* 8 top.*)*

Statutes.

The Collector applied this clause ;—

" Manufactures, articles, or wares, not specially enumerated or provided for in this act, composed wholly or in part of iron, steel, copper, lead, nickel, pewter, zinc, gold, silver, platinum, or any other metal, and whether partly or wholly manufactured, 45% ad valorem." (22 Stats., 501.)

The importer claimed under this ;—

" Paper, manufactures of, or of which paper is *a* component material, not specially enumerated or provided for in this act, 15% ad valorem." (22 Stats., 510.)

The act of 1883 requires the application of this latter clause, by the following provision of its substitute sec. 2499 ;—

" On all articles manufactured from two or more materials, the duty shall be assessed at the highest rates at which *the component material of chief value* may be chargeable." (22 Stats., 491.)

This was, in our case, undisputedly, paper. (Rec. 9, fol. 17).

POINTS.

The foregoing statement of the facts and statutes constitutes our unanswerable argument. It may be just toward Judge LACOMBE to add a few explanatory lines, showing how he happened to rule as he did. By reference to his remarks, as printed in 38 Fed. Rep. 94 and 95, we shall find he ruled the present case perfunctorily, following the Liebenroth case, 33 *Id.* 457, and observing: " *I suppose the decision in that case will practically control the decision in this.*" (38 F. R. 94 bottom.) The statement of his reasons which follows *(Id.* p. 95 top*)* show him to have fallen into the same error which was shown by his opinion in Liebenroth's case (33 F. R. 458, nineteenth line) and demonstrated in our brief here in that case (No. 147 of Oct. Tr. 1892) through failure to notice the change wrought in the pertinent clause of R. S. 2499, by the amendatory act

of 1883, making it read as above given. In the original revision, this clause read thus;—

"On all articles manufactured from two or more materials, the duty shall be assessed at *the highest rates at which* ANY *of its component parts may be chargeable.*" (R. S. (2d ed.) 459, top.)

We argued that, even as the law formerly read, Judge LACOMBE ruled these cases contrary to the Sussfield case; paraphrasing his opinion with that in 96 U. S. 129, 130; but it is sufficient that the amended statute explicitly affixes to our goods the rate for which we contend. This is shown by the opinion, reversing the judgment below in *Liebenroth vs. Robertson*, 144 U. S. 35.

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